IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

Crl.Rev.Pet.No. 1005 of 1999()

SC.NO.11/1996 OF PRINCIPAL ASSISTANT SESSIONS JUDGE, THRISSUR
CRL.A.NO.188/1997 OF IST ADDL.SESSIONS JUDGE, THRISSUR

REVN. PETITIONER:
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1. JOSE S/O. CHIRAYATH LONAPPAN,
THANIKKAMUNAYAM DESOM,
KODANNUR VILLAGE

2. VAREED, S/O.CHIRAYATH
LONAPPAN, -DO-DO-

3. FRANCIS, S/O.CHIRAYATH LONAPPAN,
-DO- -DO-

4. JACOB, S/O.CHIRAYATH LONAPPAN,
-DO- -DO-

5. ANTU ALIAS ANTONY, S/O.CHIRAYATH LONAPPAN,

6. DAVIS, S/O.CHIRAYATH LONAPPAN, -DO- -DO-

BY ADV. SRI.P.VIJAYA BHANU

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 21/06/2007, THE COURT ON 17/09/2007 PASSED THE FOLLOWING:

ORDER ON CRL.M.P.NO.4642/1999 IN CRL.R.P.NO.1005/1999

DISMISSED

SD/- K.R.UDAYABHANU, JUDGE

17/09/2007

\\TRUE COPY//

K.R.UDAYABHANU, J.

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Crl.R.P.No.1005/1999

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Dated this the 17th day of September, 2007

O R D E R

The revision petitioners are accused Nos.1,2,4,5,6&8 in S.C.No.11/1996, who stand convicted for the offences under Sections 143, 147, 148, 341, 323, 324, 324, 326 and 307 read with Section 149 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for four years each and to pay a fine of Rs.1000/- each and in default to undergo simple imprisonment for three months each for the offence under Section 307 read with Section 149 I.P.C.; rigorous imprisonment for two years each and to pay a fine of Rs.1000/- each and in default to undergo simple imprisonment for three months each for the offence under Section 326 read with Section 149 I.P.C. The substantive sentences of rigorous imprisonment are to run concurrently.

2. The prosecution case is that on 14/09/1994 in the midnight the accused, 10 in number, formed themselves into an unlawful assembly, armed with deadly weapons such as chopper, iron rods and wooden stick and, in prosecution of the common object attacked PW.2 with the

intention to kill him while he was coming through the Panchayat road, Thanikkamunayam desom and inflicted very serious and near fatal injuries. The trial court acquitted A3, A7, A9 and A10.

3. The evidence adduced in the matter consisted of the testimony of PWs.1 to 15, Exts.P1 to P12 and MOs.1 to 8. Ext.D1 is the contradictory portion in the C.D of PW.7. The injuries sustained on PW.2 as proved by PW.5, the doctor attached to Aswini Hospital, Thrissur are :-

"1. Bleeding from left ear.
2. Lacerated wounds 2 numbers 1 x 1 c.m. each on right leg.
3. Lacerated wound 8 x 2 c.m bone deep over left knee and 2 c.m x 1 c.m on right knee.
4. Lacerated wounds 2 numbers 4 x 1.5 c.m in the middle of left leg and 10 x 3 c.m on upper part of left leg cutting the bone.
5. Lacerated wound 2 x 0.5 c.m on left leg.
6. Lacerated wound 6 x 2 c.m with bone protruding above left ankle.
7. Lacerated wound 3 x 1.5 c.m on the left leg above the ankle.
8. Lacerated wound 1.5 x 1 c.m on the right shoulder.

9. Lacerated wound 2 x 1 c.m above left wrist.
10. Lacerated wound 2.5 x 1 c.m near left elbow.
11. Lacerated wound 1 x 0.5 c.m on the left upper arm.
12. Lacerated wound 5 x 1.5 c.m bone deep on left occipital region.
13. Lacerated wound 2 x 1 c.m on left shoulder.
14. Lacerated wound 1.5 x 0.5 c.m on the inner side of lower lip left side.
15. Crush injury left little toe

X-ray showed:-

1) Fracture ulna of left forearm at 2 places.
2) Fracture tibia left leg.
3) Fracture fibula of left leg at two places.
4) Fracture tibia right leg.
5) Fracture fibula of right leg.
6) Fracture lower part of radius of right forearm with dislocation of wrist.

Two other injuries, fracture of mandible, breaking of tooth."

He has also stated that PW.2 was treated as an inpatient from 15/09/1994 to 11/10/1994. He has stated that if attacked with the weapons, i.e., the material objects shown to him, the injuries could be sustained.

4. The version of PW.2, the injured is that on the particular day at midnight he was returning home along with his cousin, PW.6 on a bicycle and, when they reached at the spot, which is uphill they got down from the bicycle and was walking pushing the bicycle and when they reached a place which is half a kilometer away from his house; all of a sudden from the adjacent uninhabited compound, the accused rushed towards him and A9 beat him on the shoulder with the iron rod. He cried and turned towards the bye-lane on the southern side and ran. The accused chased him. A5, A8 and A6 caught hold of his shirt and they uttered that they would kill him. A1 and A9 shouted that his lower jaw would be smashed in the same manner as PW.2 had smashed the lower jaw of Francis (A4). A1 inflicted blows with the chopper on his shoulder, leg and head, A9 beat on his leg with the iron rod, A2 beat him with the iron pipe, A4 beat him with the wooden stick, A3, A7 and A10 kicked and beat him. PW.2 stated that there was street light and he has identified the accused as well as the weapons used by each of them. All the accused are known to him and are residents of the locality.

5. It is the version of PW.6 that on seeing the accused attacking PW.2, he attempted to escape as he was totally scared and for fear of

his life he moved towards the house of one Somasundaran. He saw A2, A5, A6 and A8 chasing PW.2, catching hold on his shirt and asking others to kill PW.2. He saw A1 inflicting blows with the chopper. A2 beating PW.2 with the iron pipe, A4 beating with the wooden reaper. He has also identified MO.1, the chopper as held by A1. MOS.2 and 3, the iron rods carried by A2 and A9 and, MO.4, the reaper held by A4. He stated that at that time when three persons including PW.1 came to the scene and accused ran away. He has also stated that there was street light near the place of occurrence.

6. PW.1 has stated that he himself and PWs.3 and 4 were playing cards in the terrace of house of Surendran situated about 200 metres from the scene of occurrence, when they heard the cries of PW.2 at the particular night and rushed to the scene and in the torch light he saw A5, A6 and A8 holding on the shirt of PW.2 and A1 inflicting cut injuries with the chopper, A2 beat with iron pipe, A9 beat with iron rod and A4 beat with wooden stick and A3, A7 and A10 beat and kicked the injured and they threw away the weapons and ran away. The cycle fell on the road side. It was he and others who took the PW.2 to the Aswini Hospital. It is submitted that he is the co-accused with PW.2 in two criminal cases for alleged beating of A2 and A4 and

in a proceedings before the R.D.O. PWs.3 and 4 who accompanied PW.1 has stated as to having seen PW.2 lying injured in the road side but has denied that they have seen the incident. Both of them were treated as hostile. It was PW.1 who rendered the F.I.S on the next day at the hospital as allegedly PW.2 was not conscious.

7. PW.7 is another witness who has stated that at about 5 p.m on 14/09/1994 while he was driving the lorry and returning to the house of PW.2 he saw 5 to 10 persons, including A1, A9 and A10 standing at the scene of occurrence armed with weapons and when he asked them the purpose, and they told him to leave the place and informed that he will come to know of the details on the next day. PW.7 is the driver of the lorry of the father of PW.2.

8. The trial court did not rely on the evidence of PWs.1 and 7 but the appellate court found that the evidence of the above witnesses is not to be discarded altogether and their evidence can be relied to a certain extent. The evidence of PW.1 can be relied as to the fact that he has seen the accused lying at the spot and the fact that he was attacked by certain persons and injuries were sustained. So also the evidence of PW.7 would disclose that there were a number of criminal

cases in between A1, A9 and A10 on the one side and the children of the father of PW.2 on the other side. So also the evidence of PWs.3 and 4 to the fact that they have seen PW.2 lying injured on the road side is also to be relied on. Both the courts have considered in detail the contention as to the contention that it is unlikely that in the midnight the accused were identified by PWs.2 and 6. It was found that the evidence of the above witnesses as well as that of PW.1 and the scene mahazar indicated that there was a street light nearby and further the accused are quite familiar to PWs.2 and 6. The contention that the scene of occurrence is different in scene mahazar and as per the version of the witnesses was also rejected as the scene mahazar contained the description of the place wherein blood drops were found. Evidently, PW.2 was chased to certain distance. The above contention has also no merits.

9. The contention that the names of assailants are not mentioned in the wound certificate has also no merits as it is to the police and not to the doctor that the names of the assailants should be stated. Further it was PW.1 who rendered the F.I.S. The delay of the F.I.R reaching the court, that is, four days was explained that the intervening days were public holidays, although the same is not a

sufficient excuse as noted by the appellate court. But the delay as such and in view of the explanation is no ground to discard the prosecution version, especially in view of the fact that there is credible evidence to support the prosecution version.

10. Ext.P4 wound certificate and the testimony of PW.5, the doctor, would disclose that PW.2 has sustained so many fractures of both bones of his legs below knee, so also both forearms were fractured and there was fracture to mandible, breaking of tooth, crushing of left toe and bleeding from the left ear. The seriousness of the above injuries and the alleged utterances by the accused that PW.2 should be done to death justify the conviction for the offence under Section 307 I.P.C. The courts below acquitted A3, A7, A9 and A10 as the version of PWs.2 and 6 with respect to the involvement of the above witnesses did not corroborate exactly. In the circumstances, I find no reason to deviate from the findings of the courts below and the conviction of the revision petitioners for the offences alleged. The conviction is confirmed.

The counsel for the revision petitioners has pleaded for leniency pointing out that more than 16 years have elapsed since the

commencement of the proceedings and that all the convicted accused are brothers. I find that avoiding imprisonment would not be appropriate in such a serious case. All the same, the sentence is liable to be modified. In the circumstances, the sentence imposed for the offence under Section 307 read with Section 149 I.P.C is modified to rigorous imprisonment for three months each and to pay a fine of rupees fifty thousand each and in default to undergo rigorous imprisonment for ten months each. No separate sentence is awarded for the rest of the offences. The fine amount, if realised, shall be paid to PW.2, the victim. The criminal revision petition is disposed of as above.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.R.P.No.1005/1999

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O R D E R

17th September, 2007